



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 66
AGENDA DATE: Thu 03/02/2006
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SUBJECT: Approve an ordinance on second/third reading for a variance request by Joel Mitchell to allow construction of an addition to a single-family residence at 1505 Parkway in the 25-year and 100-year floodplains of Shoal Creek and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain for the footprint of the residence.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Watershed Protection and **DIRECTOR'S**
DEPARTMENT: Development Review **AUTHORIZATION:** Joe Pantalion

FOR MORE INFORMATION CONTACT: Ray Windsor, 974-3362; Gary M. Kosut, P.E., 974-3374; George E. Oswald, P.E., 974-3369

PRIOR COUNCIL ACTION: February 16, 2006 - Approved on first reading

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

Joel Mitchell, the homeowner and applicant, through his contractor, Wells Teague, proposes to enlarge his home at 1505 Parkway. The proposed addition is the subject of Building Permit Number BP-05-9437RA. The applicants' residence is in the 100-year and 25-year floodplains of Shoal Creek. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit to construct a 676 sq. ft. addition (approximately 20.5 feet X 33 feet) to the existing 4372 sq. ft. single-family house. The structure includes a basement garage with two levels above the garage. The 100-year floodplain and the 25-year floodplain of Shoal Creek completely surround the existing house and would surround the room addition as well.

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
RECOMMENDS DENIAL OF THIS VARIANCE REQUEST.**

SUMMARY OF FINDINGS

- 1. PROPOSED CONSTRUCTION IS WITHIN THE 25 AND 100-YEAR FLOODPLAINS OF SHOAL CREEK.** Though the existing living area floor and proposed addition are elevated to more than one foot above the 100-year flood elevation, the house is surrounded by the 25-year and 100-year floodplains.
- 2. NO SAFE ACCESS.** For the 100-year flood event, a water depth of 1.3 feet in the front yard and a flow velocity of 5.8 feet/second impede access to the house and addition. Water depth surrounding the house is 1.3 to 3.4 feet deep.
- 3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN.** The proposed construction increases the



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- opportunity for human occupancy in the floodplain.
4. **HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST.** Proposed construction does not meet Building Code prerequisites for granting a floodplain variance.
 5. **FLOODS IN THE VICINITY.** The November 16 and 23, 2004 storm events resulted in light to moderate flooding in the lower Shoal Creek watershed. Structure flooding was reported in the 900 and 1000 block of Shoal Creek Boulevard. Significant flooding and flood-related damage occurred in the area during the Memorial Day 1981 flood. House Park football field (across the Shoal Creek from 1505 Parkway) flooded. The Pease Park pedestrian bridge was destroyed.

VARIANCES REQUESTED FROM APPLICABLE CODE AND FINDINGS

- I. Section 25-12-3. (Local Amendment to the Building Code), Appendix G, Section G102.3 (Nonconforming Uses) provides that a structure which was lawful before the adoption of the Building Code but does not conform to the floodplain regulations may be continued, subject to specific conditions, including:
 - (1) No such use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.

VARIANCE REQUESTED: *The applicant requests a variance to IBC Section G102.3, to expand and enlarge an existing, nonconforming residence in the floodplain.*

- II. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits construction of a building or parking area in the 25 and 100-year floodplains.

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) to allow construction of the addition in the 25-year floodplain.*

- III. Section 25-12-3. (Local Amendments to the Building Code), Section 1612.4.3 (Means of Egress) provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section 1612.4.3, to allow construction of an addition to an existing structure without normal access by connection with an area that is a minimum of one foot above the design flood elevation.*

- IV. LDC Section 25-7-152 (Dedication of Easements and Rights-of-way) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to Section 25-7-152(A) to exclude the footprint of the residence from the requirement to dedicate a drainage easement.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

RCA Serial#: 11272 Date: 03/02/06 Original: Yes

Published:

Disposition:

Adjusted version published:



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Per Section 25-12-3. (Local Amendments to the Building Code), Appendix G, Section G105.7 (Conditions for Issuance) variances shall only be issued upon an affirmative finding of the five conditions described below:

PREREQUISITE

1) Showing a good and sufficient cause.

Insufficient causes for issuing a variance may include the following:

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

2) A determination that failure to grant the variance would result in exceptional hardship to the applicant.

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

FINDING

1) **NOT MET.** *Cause has not been shown to grant the applicant multiple variances from floodplain management regulations that other property owners have been required to comply with.*

2) **NOT MET.** *The owner currently has economic use of the property, and has not demonstrated a hardship condition.*



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3) A determination that granting a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or cause fraud or victimization on the public, or conflict with existing laws or ordinances.

3) **NOT MET.** *The proposed development does not increase floodplain water-surface elevations. However, the front yard, which is between the front door and Parkway, is inundated by up to 1.3 feet during the 100-year event and by up to 0.2 feet in the 25-year event. Public safety risk is amplified because the proposed increase in interior space offers significant opportunity for more occupancy.*

4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4) **NOT MET.** *In this case, there is no hardship. The owner currently has use of the residential property in compliance with the Land Development Code.*

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

5) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

5) **CONDITION IS MET** *because existing and proposed house floor elevations are above the required RFD (one foot above the 100-year flood elevation).*

PASSED ON FIRST READING

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 1505 PARKWAY STREET FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF AN ADDITION TO AN EXISTING HOUSE IN THE 25 AND 100-YEAR FLOODPLAIN, AND PROVIDING AN EXPIRATION DATE FOR THE VARIANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. This ordinance applies to the construction of a 676 square foot addition to an existing house located at 1505 Parkway within the 25 and 100-year floodplain subject to Building Permit Application No. BP-05-9437RA.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G105.7 (*Conditions for Issuance*). Council finds that the variance granted by this ordinance is the minimum necessary to afford relief, is based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variance granted in this ordinance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, or create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

PART 3. A variance is granted from:

- (A) the restriction on construction in the 25 and 100-year floodplains prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) the easement requirements in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) to exclude the house and addition from the requirement to dedicate an easement to the limits of the 100-year floodplain;
- (C) the prohibition against expanding, changing, enlarging, or altering a structure in a way which increases its nonconformity prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G102.3 (*Nonconforming Uses*).
- (D) the requirement that normal access to the building be by direct connection

Backup Information Packet

Conduct a public hearing to consider variance requests by Joel Mitchell to allow construction of an addition to a single-family residence at 1505 Parkway in the 25-year and 100-year floodplains of Shoal Creek and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain for the footprint of the residence.

- **Site Location Map with Floodplains for 1505 Parkway.**
- **Close Up of Site Location Map with Floodplains for 1505 Parkway.**

Close-Up of Site Location Map with Floodplains for 1505 Parkway

